



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 16, 2003

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
1400 S. Lamar #300A  
Dallas, Texas 75215-1801

OR2003-7387

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189494.

The Dallas Police Department (the "department") received a request for "records on all personnel, discipline, commendation, Internal Affairs, Public Integrity, recruit, training and work history" for a named officer. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.111, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Included among the submitted documents is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more

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<sup>1</sup>We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b).

Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is also confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Therefore, if the department has responsive CHRI in its possession and it falls within the ambit of these state and federal regulations, the department must withhold the CHRI from the requestor under section 552.101.

The submitted documents contain fingerprint information that is subject to sections 559.001, 559.002, and 559.003 of the Government Code. They provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

(1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold this information under section 552.101 in conjunction with section 559.003 of the Government Code.

We note that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Fam. Code § 58.007(c). In addition, prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Former section 51.14(d) provided that “law-enforcement files and records [concerning a child<sup>2</sup>] are not open to public inspection nor may their contents be disclosed to the public[.]” *See* Open Records Decision No. 644 at 2 (1996). Law enforcement records pertaining to conduct that occurred before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). A portion of the submitted documents relate to juvenile conduct that occurred prior to September 1, 1997, but after January 1, 1996. Therefore, we find that neither section 58.007 nor former section 51.14(d) applies to this information, and none of this information may be withheld under section 552.101 in conjunction with either of these provisions.

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<sup>2</sup> *See* former section 51.02(1) of the Family Code (defining “child” for purposes of title 3 of Family Code as person who is ten years of age or older and under seventeen years of age).

Section 552.101 of the Government Code also encompasses information protected by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/ mental distress, Open Records Decision No. 343 (1982). Further, prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy; however, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983).

Upon review, we conclude that the some of the information submitted to this office is both highly intimate or embarrassing and of no legitimate public interest. The department must withhold the information we have marked as coming within the common-law right of privacy under section 552.101.

We now turn to your arguments under section 552.108. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). Based on your representations and our review of the submitted information, we agree that the release of most of the information for which you claim section 552.108 would interfere with the department's law enforcement efforts. Therefore, the information that we have marked, as well as all of the information in the internal affairs file may be withheld under section 552.108(b)(1).<sup>3</sup> *See* Open Records Decision No. 211 at 3-4 (1978). However, we find that you have not demonstrated that release of the information relating to an officer's outside employment would interfere

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<sup>3</sup> Because section 552.108 is dispositive in relation to the information in the internal affairs file, we do not address your other claims regarding this information.

with law enforcement or prosecution, and therefore, this information may not be withheld under section 552.108.

You also claim that some information is excepted under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); see also *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin, 2001, no pet.). The purpose of section 552.111 is “to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. See Open Records Decision No. 615 at 5-6 (1993). Based on our review of your representations and information at issue, we agree that this information constitutes internal communications consisting of advice, opinions, and recommendations reflecting the policymaking processes of the department. Accordingly, we conclude that the department may withhold this information from disclosure pursuant to section 552.111 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer’s<sup>4</sup> current and former home addresses, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code. Thus, we agree that the department must withhold the information you have marked pursuant to section 552.117. We have marked some additional information that must also be withheld under this exception.

Finally, section 552.130 excepts from public disclosure information relating to a driver’s license or motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130. Thus, we agree that Texas driver’s license and motor vehicle information you have marked must be withheld under section 552.130. As we are able to make these determinations, we do not address your remaining arguments.

In summary, the department must withhold the accident report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b). The

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<sup>4</sup> “Peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

department must withhold any responsive CHRI obtained from DPS or any other criminal justice agency under section 552.101 in conjunction with chapter 411 of the Government Code. The submitted fingerprints must be withheld under section 552.101 in conjunction with section 559.003 of the Government Code. The department must withhold the private information we have marked under section 552.101. The department may withhold the information we have marked pursuant to section 552.108, and may withhold the information for which it claims section 552.111. Section 552.117 information pertaining to the officer must be withheld, and the department must withhold Texas driver's license and motor vehicle information under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

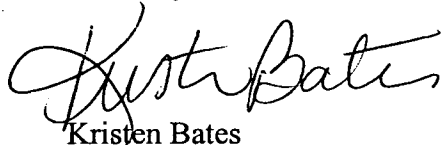
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", is written over the typed name.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 189494

Enc. Submitted documents

c: Mr. Jason Trahan  
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(w/o enclosures)